

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Javier Francisco Albelais-Valenzuela,

Defendant.

No. CR 04-301-TUC-JMR

ORDER

Pending before this Court is Defendant's Motion to Dismiss Indictment for Due Process Violations in Deportation Proceedings. This matter arises from Defendant's indictment for illegal re-entry after deportation pursuant to 8 U.S.C. § 1326 and enhanced by 8 U.S.C. § 1326 (b)(1). Defendant alleges that his underlying 1997 deportation order was invalid and, accordingly, his current indictment should be dismissed.

At the deportation hearing on November 4, 1997, Defendant was found deportable and denied voluntary departure. Defendant, through counsel, reserved his right to appeal and was advised that appeal must be perfected by December 4, 1997. Defendant was physically deported from the United States on November 10, 1997. Defendant alleges that his due process rights were denied because Defendant was deported before the expiration of time to seek appeal and because the Immigration Judge failed to inform Defendant of his entitlement to certain forms of relief.

On September 26, 2005, after a thorough and well-documented analysis, Magistrate Judge Hector Estrada issued a Report and Recommendation (R & R) to this Court. Neither party filed an objection to the R & R. The Magistrate Judge recommended that Defendant's motion be denied. In his analysis, he concluded that Defendant has not shown he was prejudiced by alleged due process violations at the 1997 deportation hearing.

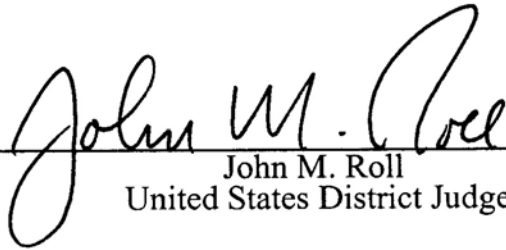
If there are no objections to the R & R, the Court will modify or set aside only those portions that are clearly erroneous or contrary to law. *See* 28 U.S.C. § 636(b)(1); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.) (*en banc*), *cert. denied*, 540 U.S. 900 (2003). The Court has carefully reviewed the entire record and concludes that Magistrate Judge Estrada's recommendations are not clearly erroneous or contrary to law. The Court agrees that Defendant has not shown he was prejudiced by alleged due process violations at the 1997 deportation hearing.

Accordingly,

IT IS ORDERED that the **REPORT AND RECOMMENDATION** of the Magistrate Judge filed **September 26, 2005**, is **ADOPTED**.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss Indictment for Due Process Violations in Deportation Proceedings [Doc. # 38] is **DENIED**.

DATED this 25th day of October, 2005.



John M. Roll
United States District Judge